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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,998	08/17/2001	Steven Buoncuore	SB1	4180

7590 12/13/2002

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EXAMINER

WERNER, FRANK E

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/13/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER 3
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-12 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on 8-17-01 are informal, is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

BEST AVAILABLE COPY

1. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re base claims 1 and 10, no frame structure has been set forth as has no base or boom structure been set forth. Further, re claim 1, no fork truck structure (frame, wheels, mast, carriage, forks, etc.) has been set forth and it is not understood how the lid is lifted and it is not understood where the "lid handle" (line 4) is structurally located; also it is not understood where the base structurally stands when not in use. Re claims 2 (line 2) and 4 (line 4), improper alternate claiming is present. Re claim 3, the "upper surface" (lines 1 and 2) and "the lower surface" (line 2) lack antecedent basis as does "the upper surface" (lines 1 and 2 of claim 4), "the forks" (line 2 of claim 6), "the end" (claims 9 and 12, line 1 of each claim). Re claim 4, the function and structure of the "limit stop" (line 2) is not understood as is the "safety strap" (claim 5, line 1), the "lifting shackle" (claims 9 and 12, line 2 of each claim) and the "one ear" (claim 11, line 2). Re claim 10, because no detailed descriptions of Figs. 6 and 7 are present, it is not understood how the lifter claimed therein functions; moreover, the discussion re the lifting function, lid handle and the not in use base in claim 1 is applicable to this claim; also, a detailed description of Figs. 6 and 7 is required avoiding any matter not supported by the original specification, claims and drawings. Re claim 11, the meaning of "pf" (line 2) is not understood and it is not understood where (and how) the ears are structurally mounted and function. Re claim 5, "a fork truck" (line 2) is a double inclusion of parts.

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2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Canadian Patent (,989) in view of Glass et al (,399).

The Canadian Patent discloses a railroad car lid lifter with a base having a frame 24 (20, etc.) engaged by a lift truck's forks 25, a boom 30 having hook fittings 64 (68, etc.) for engaging lid handles 58 of cover 60, but does not have a freely standing boom, base and frame which is disclosed by Glass et al (boom 10, frame 17, etc) and in view of the same, it would have been obvious to have substituted a freely standing base for storage purposes as taught by Glass et al. Re claims 4, 5, 7, 10 and 11, respectively, the inclusion of a conventional limit stop and safety strap, conventional elastomeric covering, the substitution of a conventional ram truck (as claimed) and conventional ear would have been obvious. Re claims 8, 9 and 12, respectively, Glass et al (boom 10 with lifting shackle 27, column 16 etc.) teach and render obvious the alternate inclusion of a column and distal lifting shackle on the boom.

4. This application contains claims directed to the following patentably distinct species of the claimed invention: Species A – Figs. 1 and 2; or Species B – Figs. 6 and 7.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Further elections (following the above procedure) between the boom as represented by Species C – Fig. 3 or Species D – Fig. 4; and lid handles as represented

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by Species E – Fig. 5A; or Species F – Fig. 5B; or Species G – Fig. 5C; or Species H – Fig. 5D are also required.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication should be directed to F. E. Werner at telephone number (703) 308-1140.

Summary:

Claims 1-12 are rejected and are subject to a restriction requirement.

Rejection – SSP 3 mos.

Werner/kl
December 4, 2002

Frederick Werner
FREDERICK WERNER 12/02
PRINCIPAL EXAMINER
3652